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Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm

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Report of the Secretary-General

Addendum

Burkina Faso

1. In Burkina Faso, there is no case law in which the governmental authorities have invoked or applied the principles of allocation of loss in the case of transboundary harm arising from hazardous activities. However, the prevention of transboundary harm resulting from subversive activities, and civil liability when such harm does occur, are governed by various provisions, including those of the Burkina Faso Environmental Code, Act No. 006-2013/AN, and Mining Code, Act No. 036-2015/CNT of 26 June 2015.

2. Under article 37 of the Environmental Code, the operation of any industrial, mining, agricultural or small-scale activity and, in general, that of any establishment, must be managed so as to avoid causing hazardous or undesirable effects to the environment.

3. National legislation divides establishments which, in operating, entail risks or potential negative effects — whether in terms of the tranquillity and appearance of the surrounding area, public health and safety, agriculture, the conservation of sites and spaces or the maintenance of biodiversity — into three classes.

4. The first class includes establishments which, because of their nature, must be situated far from homes. The second class includes establishments which do not strictly need to be situated far from homes, but which may operate only when measures are taken to prevent dangerous or harmful effects. The third class covers establishments which, while presenting no serious threats either to the vicinity or to

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public health and safety, are nevertheless subject to general requirements designed to prevent environmental damage.

5. These establishments are subject to regular environmental inspections. Inspections of classified establishments are carried out by certified inspectors who specialize in this area.

6. In Burkina Faso, establishments in the first and second classes may open only with the authorization of the minister responsible for the relevant sector, and following prior written approval by the Environment Minister. For establishments in the third class to open and function, prior declarations of approval by the Environment Minister and the minister for the appropriate sector are required. When the installation, construction, operation or functioning of any industrial, small-scale or agricultural establishment; any enterprise or business; or any machinery, presents serious hazards or drawbacks to the surrounding area and to public health and safety, the competent regional public authority takes an administrative decision to close the establishment or enterprise, or to suspend its activity, without prejudice to any criminal sanctions which might be applicable (article 46 of the Environmental Code).

7. As regards the mining sector, according to the Environmental Code (article 25) and the Mining Code (article 41), before any mining project can proceed, a proposal must be approved by the Environment Minister, who bases his or her decision on a strategic environmental assessment. This assessment forms part of an environmental and social management plan under which all projects' impacts (including social impacts) are considered, and which establishes various measures to compensate for, diminish or mitigate each of the impacts, within a given time frame. Under article 26 of Act No. 036-2015/CNT, holders of mining permits must contribute 1 per cent of either their gross monthly turnover, or of the value of the products extracted during the month, to the local mine development fund. In addition, the Environmental Code provides that the environmental impact studies for all projects, including those involving resource exploitation, are accompanied by public inquiries designed to obtain the views on the projects of the people concerned. These public inquiries are a way for communities to express their opinions on projects in order to avoid the danger that they might entail.

8. In Burkina Faso, transboundary environmental issues are addressed in consultation with the State or States concerned, in compliance with the relevant international standards. Importing of hazardous waste products is strictly prohibited. Any waste from abroad is presumed to be hazardous. The other types, or categories, of waste subject to specific import control regimes are established by the law (article 59 of the Environmental Code). Similarly, the export and transit of hazardous waste to States that prohibit such import is banned. The export and transit of hazardous waste to third States must be authorized by the Environment Minister, subject to those Governments' prior written consent. In cases of illegal transit of hazardous waste, therefore, the producers and importers of the waste, as well as its distributors and those responsible for storing it, are jointly and severally liable for any harm caused by such waste.

9. The court involved in any instance of an environmental offence may order the publication of its judicial decision. In addition, it may, as appropriate, order the termination, or suspension for a period of its choosing, of activities; the closure of

the establishment; and the restoration and sanitation of facilities, without prejudice to civil reparations (article 122 of the Environmental Code).

10. Ignorance or violation of these various provisions by hazardous companies or establishments exposes them to criminal sanctions, and, in accordance with the provisions of the Civil Code, to their civil liability in the event of transboundary harm. Under civil law, any natural or legal person who causes harm to another must make reparations. Thus, they are liable for any harm that they cause, not only through action, but also through negligence or imprudence (articles 1382 and 1383 of the Civil Code). As regards criminal liability, articles 125-141 of the Environmental Code provide for sanctions for misdemeanours and articles 141-144 for crimes.

11. In sum, these are the measures taken by Burkina Faso, not only to prevent any harm, including transboundary harm resulting from hazardous activities, but also, and above all, to ensure prompt and adequate compensation to victims of such harm. Burkina Faso believes that such provisions could be taken into account, as appropriate, in the drafting of a convention on the prevention of transboundary harm resulting from hazardous activities and allocation of loss in the case of such harm.